



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960
September 24, 2008

URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
VIA ELECTRONIC MAIL AND
FIRST CLASS MAIL

Mary LeAnn Mynatt
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
2200 Riverview Tower
900 South Gay Street
Knoxville, Tennessee 37901

Re: Request for access to 1508 Maryville Pike, Knox County, Tennessee

Dear Ms. Mynatt:

I am writing to you to request that your client, Dana Johnson, grant the United States Environmental Protection Agency ("EPA") access, to the extent that she has authority to do so, to the property located at 1508 Maryville Pike, Knox County, Tennessee ("Property") or sign the enclosed Affidavit. Also, I am writing to ask that she provide EPA with contact information for her brother, Brandon Johnson.

EPA is investigating the release or threat of release of hazardous substances, pollutants, or contaminants on the Property, which is known as the Smokey Mountain Smelter Site ("Site"). As you know from our previous conversations, it is EPA's belief that Ms. Johnson is a legal heir to the estate of Daniel Johnson, who, at the time of his death in 1998, held legal title to the Site property. As of today, Mr. Johnson's estate has not been probated, and the Site property still remains in his name. EPA believed that Mr. Johnson's legal heirs were Dana Johnson, Brandon Johnson, and his former wife, Diane Johnson, and that EPA needed all of these individuals' consent to access the Site property to perform the removal action.

Since our last conversation, I have located and spoken with Diane Johnson, and she has informed me that while she is an "heir" to the Site Property, she is not a beneficiary to Mr. Johnson's estate. Diane Johnson said that she signed a Pre-nuptial Agreement with Mr. Johnson, and therefore upon his death she had no legal rights to the Site property. She agreed to sign a notarized document stating that she had no legal rights or ownership interest in the Site property, and that regardless of the fact that the estate had not been probated, she had no objection to EPA having access to the Site property to perform any work. Therefore, EPA has accomplished the task of resolving access authorization with one of the three heirs, Mrs. Johnson.



During our last telephone conversation, I understood that at that time Dana Johnson did not have any intentions of probating her father's estate and did not have any interest in pursuing legal ownership of the Site property. As we discussed, since there has been no legal action taken by any of the heirs of Mr. Johnson's estate, EPA has been placed in a difficult position. To enable EPA to have access to the Site Property, EPA requests that your client or that you, on behalf of your client, execute one of the two enclosed documents: (1) the Access Authorization or (2) the Affidavit. As you will see, if your client chooses to execute the Affidavit, EPA will not contact your client again to seek her permission on any matter relating to the Site, which is what I understand was your client's desire when we last spoke.

The current proposed removal activities will serve to prohibit access to the Site by unauthorized personnel and trespassers and determine the extent of hazardous substances, pollutants, and contaminants being released from the Site. Specifically, the removal activities at this time will include: clearing any brush or vegetation that impedes work areas; repairing the chain-link fence that currently surrounds the Site; installing vehicle gates and warning signs; and collecting soil, surface water, and air samples.

Please be advised that, pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") (Public Law 99-499), EPA has the express authority to acquire access to property affected by hazardous substances and to conduct the planned removal action. If a request for access is denied, an administrative order directing compliance with the request may be issued, civil action to compel compliance may be initiated, or access may be sought by any other lawful means. Under certain circumstances, a court may impose a civil penalty in an amount not to exceed \$32,500 per day for failure to grant access or comply with an administrative order directing that access be granted.

Finally, EPA does not know how to locate your client's brother, Brandon Johnson. I have asked that your client provide EPA with the contact information for her brother, but she has not done so to date. We would greatly appreciate your client providing us with any information she has about his last known whereabouts. For his and her convenience, I have enclosed an Access Agreement and Affidavit for him to sign as well in the event that Ms. Johnson is in contact him. We would greatly appreciate it if she would provide these documents to him to facilitate the access.

Ms. Mynatt, I understand that this may be a difficult situation for your client, but it is EPA's mandate to protect human health and the environment and without Ms. Johnson's cooperation, EPA can not conduct this removal action. Since Ms. Johnson is a legal "heir" to the Site Property, if your client does not agree to sign one of the enclosed documents, EPA will have to expend money

and time to obtain a Court Order. I believe that the Access Authorization and the Affidavit are good options for your client. Of course, we would welcome any other suggestions that you may have to resolving this access issue.

Please call me at (404) 562-9572 if you would like to have more discussion about this matter. EPA needs to know if your client will sign one of the enclosed documents by close of business on Monday, September 29, 2009. Your assistance and cooperation are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Teresa Mann".

Teresa Mann
Associate Regional Counsel

Enclosure

ACCESS AUTHORIZATION

1. I, Dana Johnson, am the daughter of the deceased Mr. Daniel E. Johnson, who is the legal tile owner of the property located at 1508 Maryville Pike, Knox County, Tennessee ("Site"). To the extent I have any authority over access to the Site, I authorize access to the Site in accordance with the following provisions of this Access Authorization.
2. I grant authorization to the United States Environmental Protection Agency ("EPA"), its officers, employees, contractors, and other authorized representatives to enter the Site. This authorization allows EPA, its officers, employees, contractors, and other authorized personnel to have access to the Site to conduct a removal action. EPA's activities at the Site will include, but not be limited to, the following:
 - a. clearing brush and other vegetation on-Site;
 - b. repairing the chain-link fence that currently surrounds the Site;
 - c. installing vehicle gates;
 - d. installing warning signs;
 - e. collecting surface soil, subsurface soil, surface water, and air samples; and
 - f. other activities necessary to complete the removal action.
3. The consent for access granted herein will commence upon the date of execution below and will continue until EPA completes the response action, but not to exceed October 31, 2009.
4. I have been notified that these actions by EPA are undertaken pursuant to its response authority under Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(a).

Date: _____

Dana Johnson

ACCESS AUTHORIZATION

1. I, Brandon Johnson, am the son of the deceased Mr. Daniel E. Johnson, who is the legal tile owner of the property located at 1508 Maryville Pike, Knox County, Tennessee ("Site"). To the extent I have any authority over access to the Site; I authorize access to the Site in accordance with the following provisions of this Access Authorization.
2. I grant authorization to the United States Environmental Protection Agency ("EPA"), its officers, employees, contractors, and other authorized representatives to enter the Site. This authorization allows EPA, its officers, employees, contractors, and other authorized personnel to have access to the Site to conduct a removal action. EPA's activities at the Site will include, but not be limited to, the following:
 - a. clearing brush and other vegetation on-Site;
 - b. repairing the chain-link fence that currently surrounds the Site;
 - c. installing vehicle gates;
 - d. installing warning signs;
 - e. collecting surface soil, subsurface soil, surface water, and air samples; and
 - f. other activities necessary to complete the removal action.
3. The consent for access granted herein will commence upon the date of execution below and will continue until EPA completes the response action, but not to exceed October 31, 2009.
4. I have been notified that these actions by EPA are undertaken pursuant to its response authority under Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(a).

Date: _____

Brandon Johnson

AFFIDAVIT OF BRANDON JOHNSON

State of Tennessee

County of _____

BEFORE ME, the undersigned Notary, _____, on this _____ day of _____, 2008, personally appeared Brandon Johnson, known to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath, deposes and says:

1. I have been informed by representatives of the United States Environmental Protection Agency ("EPA") that the EPA is investigating the release or threat of release of hazardous substances, pollutants, or contaminants at the property located at 1508 Maryville Pike, Knox County, Tennessee, which is referred to as the Smokey Mountain Smelter Site. I understand that this investigation is being conducted pursuant to EPA's response authority under Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9604(a).

2. I am the son of Daniel Johnson, who died in 1998. I understand that the legal title to the property located at 1508 Maryville Pike, Knox County, Tennessee is still in his name.

3. To the extent that I may have any legal rights or ownership interest in the real or personal Property located at 1508 Maryville Pike, Knox County, Tennessee ("Property") that may arise in the future, I do not have any objection to the EPA, its officers, employees, contractors, and other authorized representatives accessing the Property to conduct a removal action from the date on which this document is executed.

4. Hereafter, EPA is directed to remove my name from the contact list for this property. EPA does not need to contact me in the future to obtain permission for access to the Property, to inform me of any work that is being performed on the Property, or for any other matter pertaining to the Property. I do not object to EPA performing any work under CERCLA on this Property.

5. It will be my responsibility to inform the EPA in a signed and notarized document, if in the future, I am asserting my legal rights or ownership interests in the Property and that EPA should contact me to obtain permission for access to the Property, to inform me of any work that is being performed on the Property, or for any other matter pertaining to the Property.

Brandon Johnson

(Address) _____

Subscribed and sworn to before me, this _____ day of _____, 2008.

[Notary Seal:]

[signature of Notary]

Name of Notary

NOTARY PUBLIC

My commission expires: _____, 20____.